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In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

DAVID OSHER, PETITIONER

v.

SELECTIVE SERVICE LOCAL BD. NO. 6, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENTS

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Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1467

DAVID OSHER, PETITIONER

v.

SELECTIVE SERVICE LOCAL BD. NO. 6, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENTS

Petitioner, a graduate student at Columbia University classified II-S, turned in his draft card in protest against the Vietnam war on January 11, 1968 (Pet. 4). On March 19, 1968, he was declared delinquent for failing to have his Registration Certificate in his personal possession, as required by 32 C.F.R. 1617.1, and was reclassified from II-S to I-A the same day (*ibid.*).

On April 15, 1968, petitioner brought this pre-induction suit to overturn his I-A classification and en-

join his impending induction (Pet. 4). On November 4, 1968, the district court preliminarily enjoined petitioner's induction until ten days following the decision in *Oestereich* v. *Selective Service Local Bd. No. 11*, 393 U.S. 233, which was then pending before this Court (see Pet. 12). Subsequent to the Court's decision in that case and in *Clark* v. *Gabriel*, 393 U.S. 256, the injunction was vacated by the district court (Pet. 15). The court of appeals summarily affirmed, but stayed petitioner's induction on the condition that he file a petition for a writ of certiorari by May 31, 1969 (Pet. 9-10).

Petitioner maintains that Section 10(b)(3) of the Military Selective Service Act of 1967 (50 U.S.C. App. (Supp. III) 460(b)(3)) should not be construed as prohibiting pre-induction judicial review in circumstances such as those involved here, and challenges his reclassification and ordered induction as punitive in nature and in violation, *inter alia*, of the First and Fifth Amendments. Accordingly, this case involves issues identical to those in *Kolden* v. *Selective Service Local Bd. No. 4*, pending on petition for a writ of certiorari, No. 1175, 1968 Term, and presents substantially the same questions as those raised in *Breen* v. *Selective Service Local Bd. No. 16*, 406 F. 2d 636 (C.A. 2), in which certiorari was granted on April 28, 1969 (No. 1144, 1968 Term). Since the Second Circuit obviously relied upon its holding in *Breen* in affirming here, and since that case is now before this Court on the merits, it would appear appropriate to

defer action on this petition until after *Breen* has been decided.

Respectfully submitted.

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